

DETAILED ACTION

Examiner's Comment

Examiner acknowledges the cancellation of Claims 2, 3, 6-13, 19-21, 34 and 35.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Pook (US 5,106,022).

In regard to Claims 1 and 36, Pook teaches a nozzle arrangement adapted to be fitted to an outlet of a fluid supply and to generate a spray of fluid dispensed from the fluid supply during use, the nozzle arrangement having a body that has an inlet (12) through which fluid flows from the fluid supply accesses the fluid of the nozzle arrangement (apparatus of the Figure) during use, an outlet (9) through which fluid is ejected from the nozzle arrangement during use and an internal fluid flow passage (6,7,8) which connects the inlet (12) to the outlet (9) where the fluid flow passageway (6,7,8) includes a chamber (4) and at least one spray orifice (orifice of "9") downstream

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of the chamber (4), the spray orifice (orifice of "9") having a cross-sectional area smaller than the cross-sectional area of any part of the chamber (4), the chamber (4) being non-planar expansion of the passageway (6,7,8) and having at least one inlet orifice (see other orifice of "12"), the chamber (4) comprising a first section downstream of the at least one inlet orifice (see other orifice of "12") to the chamber (4) having divergent walls (see diverging walls of "4" in Figure 1 between "4" and "5") immediately followed by a second section, downstream of the first section where the second section has convergent walls (see converging walls of "6" in Figure 1; Expansion and constriction is occurring in "4" where fluid diverges into "4" from "12" then converges or constricts from "4" to "7" via "6").

In regard to Claim 4, Pook also teaches where a shaped chamber (4) has an internal chamber disposed at a position along the length of the fluid flow passageway (6,7,8), and has a constricted inlet, through which fluid flowing through the passageway during use accesses the chamber (4) and a constricted outlet (into "7"), through which fluid exits the chamber (4) during use.

With further regard to Claim 36, Pook further teaches where in the direction of flow through the chamber (4), a first section of constant width, a second section having convergent walls in which the width of the chamber is reduced in the direction of the flow, a third section or intermediate sub-chamber of constant width, a fourth section having divergent walls in which the width of the chamber is increased in the direction of the flow, and a fifth section of constant width leading to an outlet orifice, the width of the intermediate sub-chamber being greater than that of the narrowest parts of the second

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and fourth sections that lead into and out of the intermediate sub-chamber, where a sixth section between the fifth section and the outlet orifice, the sixth section having convergent walls in which the width of the chamber is reduced in the direction of flow and where the width of the chamber is the same as the first, third and fifth sections.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 4, 5, 14-18, 22-33 and 36 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-35 of U.S. Patent No. 6,959,879. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of Claims recite at least but not

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limited to common language to a nozzle arrangement having body, an inlet for fluid to access the arrangement, an outlet that fluid is ejected from an internal passageway that is between the inlet and the outlet, where a chamber is included in the passageway and a spray orifice downstream of the chamber and a first section downstream of the inlet orifice to the chamber has divergent walls and a second section downstream of the first section where the second section has convergent walls or a venturi (as well as, a constriction means, a fluid passageway, diverging section or expansion sections as recited by both sets of claims respectively).

Response to Arguments

Objection to Drawings

Applicant's arguments, see amendment to Claim 1 and remarks on pages 9-12, filed 01/15/2010, with respect to the objection to the drawings have been fully considered and are persuasive. The objection of the drawings has been withdrawn in view of Applicant's amendment to Claim 1 that deletes the actuator means language and the amendment to the specification that adds reference number "82" to correspond with the "posts" feature, the clarification of reference number "63" for the pits and holes as disclosed, and the clarifies the distinction between reference number "302" and "303" respectively.

Rejection under 35 USC § 102

Applicant's arguments filed 01/15/2010 have been fully considered but they are not persuasive. Examiner cannot agree with Applicant's assertions that the newly added subject matter to Claim 1 as well as new Claim 36 distinguish over Pook. Examiner notes that the newly added subject matter recites language to a venture for which Pook covers by having the a first section downstream of the inlet orifice to a chamber that has divergent walls immediately followed by a second section that is downstream of the first section where the second section has convergent walls. Examiner has updated the rejection to show where Pook teaches the new limitations and is hereby maintaining the rejection held against Claims 1 and 4.

Double Patenting Rejection

Applicant's arguments filed 01/15/2010 have been fully considered but they are not persuasive. Examiner cannot agree with Applicant's assertions that the present claims and the '879 patent claims are patentably distinct. Examiner notes that the although the claims of the present invention and the '879 patent are not identical that the venturi language that is recited in the '879 patent covers the newly added subject matter of Claim 1 and Claim 36 respectively (e.g. a first section downstream of the at least one inlet orifice to the chamber having divergent walls immediately followed by a second section, downstream of the first section the second section having convergent

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walls.). Examiner notes that these newly added limitations describe structure for a venturi passageway that the '879 patent already has coverage for.

Examiner does however withdraw the provisional double patenting rejection held against the patent application in view of Applicant's showing of express abandonment.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trevor E. McGraw whose telephone number is (571)

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272-7375. The examiner can normally be reached on Monday-Friday (2nd & 4th Friday Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571) 272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/T. E. M./
Examiner, Art Unit 3752
/Len Tran/
Supervisory Patent Examiner, Art Unit 3752

03/27/2010